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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL LEEDER, CARROLL LOUISE GRAY-
PRESTON, JAMES ANGUS MCEACHERN, and
RICHARD C. TAYLOR

Appeal 2015-007861
Application 13/206,111
Technology Center 2400

Before CARL W. WHITEHEAD JR., ADAM J. PYONIN, and
AARON W. MOORE, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–53, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Introduction

The Application is directed to managing associations between users in multiple over-the-top service platforms. Title. Claims 1, 27, and 53 are independent. Claim 1 is reproduced below for reference:

1. A method for managing associations between users in multiple over-the-top (OTT) service platforms, the method comprising:

receiving a first message indicating an action associated with a first user in a first OTT service platform;

generating, based on the first message, a second message for performing a related action in a second OTT service platform; and

communicating the second message to the second OTT service platform.

References and Rejection

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Frank	US 2005/0125541 A1	June 9, 2005
Bostrom	US 2011/0208814 A1	Aug. 25, 2011

Claims 1–53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Frank and Bostrom. Final Action 3.

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellants’ arguments. We are not persuaded the rejection is in error. We highlight and address specific findings and arguments as follows.

A. Independent Claims

Appellants argue the Examiner erred in rejecting independent claim 1, because the proposed combination of Frank and Bostrom fails to teach each claim element. Final Action 5. Regarding Frank, Appellants contend “Frank does not teach or suggest OTT [i.e., over-the-top] services or OTT service platforms. Rather, Frank discloses communication services that are integrated into the same system or network.” Appeal Brief 6; *see also* Reply Brief 2–3. Appellants contend Bostrom does not teach communicating the second message to the second OTT service platform, as claimed, because “[w]hile the process taught by Bostrom may achieve an end of adding a new association in the user’s social graph as maintained on social networking platform 107, the request (i.e. message) is communicated to the same (first) platform (i.e. platform 107) from and to which all communications are directed.” Appeal Brief 9; *see also* Reply Brief 4–5.

We are not persuaded the Examiner erred. We adopt the Examiner’s findings and conclusions regarding the independent claims as our own, and add the following for emphasis.

First, we disagree with Appellants’ characterization of Frank’s teachings. We agree with the Examiner that Frank teaches the OTT service platforms as claimed, because Frank teaches using “communication modes (over-the-top platforms) . . . like Instant Messaging, voice conversation mode[s] like VOiP, or voice/video conversation modes” (Answer 3), and “the applications providing that mode of communication are independent of GUI, the icons show different IM providers (para. 51)” (Final Action 28). *See* Frank ¶ 39. Frank discloses that examples of such communication modes include “the AOL® IM service” and “Yahoo®,” and the Examiner

correctly finds such teachings are tantamount to the examples of OTT service platforms provided in the Specification. *See* Final Action 28; *see also* Frank ¶ 53; *compare* Specification 7:8–11 (“For example, an OTT service platform may be a peer-to-peer voice over Internet protocol (VoIP) provider (e.g., Skype or Google Talk), an instant messaging service (e.g., America online instant messenger, Yahoo messenger, Google’s Gchat), [or] an email service”).

Second, Appellants’ arguments do not persuade us the Examiner’s combination was in error. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981) (“[o]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references”). Here, the Examiner correctly finds an artisan would modify Frank’s teaching of managing messages among users of various OTT service platforms (Final Action 3–4; Answer 3), with Bostrom’s teaching of managing communications (such as invitations, events, and adding contacts) across different social networks based on shared OTT service platform user history (Final Action 4; Answer 4). We agree. *See* Frank ¶¶ 39, 46 (describing rules, including upon “receipt of a voice call and user 12 is out of the office. In defining a rule for this example, user 12 can specify actions such as send the voice call to voice mail, disconnect the voice call, or forward the voice call to some other user.”);¹ Bostrom ¶¶ 20–21 (“recommendations on adding people to one or more social networking

¹ Separately, we note Frank also teaches or suggests a user may receive communications in one OTT service platform and send communications using another OTT service platform, which suggests communicating a second message to a second OTT platform. *See* Frank Figures 3, 3A; ¶¶ 25–26, 44–45 (describing including voice messages or synchronous phone connections in an e-mail).

services may be determined based on a relevant social graph”); ¶¶ 43–45. Based on the record before us, we do not find the limitations of claim 1 “represent[] an unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

We are not persuaded the Examiner erred in rejecting independent claim 1 as obvious over Frank and Bostrom. Accordingly, we sustain the Examiner’s rejection of independent claim 1, and independent claims 27 and 53, which are not argued separately. *See* Appeal Brief 5, 7, 9.

B. Dependent Claims

Appellants contend the Examiner erred in rejecting dependent claim 3, because:

the Examiner’s answer discusses communications between users or an action taken by a user, rather than a second message that is generated, based on a first message, for performing a related action in a second OTT service platform, by the claimed system or method. In claims 3 and 29 this action is to, “disassociate the first user with the second user in the second OTT service platform.”

Reply Brief 7. The Examiner finds Frank teaches a user “can specify an action(s) (i.e., send to voice mail, disconnect (destruction of an association) the voice call, or forward the call) to another user that is connected or has established a connection” and the user interface can also indicate the status of the users. Answer 5 (citing Frank ¶¶ 46, 53). We are not persuaded the Examiner erred. Frank discloses using a “rules assistant, user 12 can specify actions computer 14 should take when certain events such as an incoming request to converse, from user 22 to user 12, arrives at computer 14.” Frank ¶ 46. These rules can be based on, *inter alia*, the indicated status of a given

user (such as “out of the office”) and can manage communications (such as “disconnect[ing] the voice call”). *Id.* Appellants have not persuaded us Frank’s teaching of communications based on rules and indications of user status does not suggest the messaging required by claim 3. Thus, we sustain the Examiner’s rejection of dependent claim 3, and claim 29 which recites similar limitations. *See* Appeal Brief 11.

Regarding dependent claim 8, Appellants argue the Examiner erred in finding the cited references teach the limitation “generating a third message comprising a request to associate the first user with the third user in the third OTT service platform,” because the references teach “normal social networking communications between users,” and such “normal messaging and request operation by users do not meet [the claimed] elements.” Reply Brief 9. We are not persuaded the Examiner erred. We note both Frank and Bostrom teach multiple messages to multiple OTT service platforms. *See* Frank Figures 1, 3A, ¶ 8 (describing “two or more communication modes”); Bostrom Figures 1, 3, ¶¶ 19–21 (describing “social networking applications 103a-103n”). Further, other than referring to the messaging as “normal,” Appellants present no evidence or substantive arguments to persuade us claim 8 precludes the prior art messaging as found by the Examiner. Accordingly, we do not find the Examiner erred in rejecting dependent claim 8, and dependent claim 34 not separately argued. *See* Appeal Brief 13.

Appellants argue the Examiner erred in rejecting dependent claims 12 and 38, because “nothing in the teachings of the social graph of Bostrom would seem to teach or suggest . . . the metadata indicating such [claimed] and/or further interrelationships.” Reply Brief 11. We are not persuaded the Examiner erred. Appellants’ Specification characterizes metadata as

“describing the interrelationship between one or more users of one or more OTT service platforms.” Specification 28:20–22. Bostrom similarly teaches a social graph, which “is a data structure or a group of data structures (e.g., list, table, etc.) that stores connection and relationship information between users.” Bostrom ¶ 19; Answer 7. Thus, we agree with the Examiner that the limitations of claims 12 and 38 reasonably encompasses the social graph as taught by Bostrom.

Appellants argue the Examiner erred in rejecting dependent claims 2, 7, 10, 28, 33, and 36. *See* Appeal Brief 10, 12, and 13–14. We are not persuaded the Examiner erred, however, because Appellants’ arguments consist of reiterating that “Frank fails to teach or suggest communicating a second message to a second OTT service platform” as recited by independent claim 1. Appeal Brief 10, 12, 14. As discussed above, we agree with the Examiner’s finding that the combination of Frank and Bostrom teaches the claimed “communicating a second message to a second OTT service platform.” Thus, Appellants’ arguments for these dependent claims—that the cited references do not teach the independent claim limitations—do not persuade us of Examiner error in relying on the cited combination of references. *See* Appeal Brief 10, 12, and 13–14; *see also* Final Action 5, 7, 8, 16, and 17–20. In the Reply Brief, Appellants present new arguments regarding the limitations of dependent claims 2, 7, 10, 28, 33, and 36. Reply Brief 5–11. We do not consider these arguments, because they were not presented in the opening brief. *See Optivus Technology, Inc. v. Ion Beam Applications S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (argument raised for the first time in the Reply Brief that could have been raised in the opening brief is waived); *see also* 37 C.F.R. § 41.41(b)(2).

Accordingly, we are not persuaded the Examiner erred in finding Frank and Bostrom teach the limitations of dependent claims 2, 7, 10, 28, 33, and 36.

CONCLUSION

We sustain the Examiner's rejection of claims 1–3, 7, 8, 10, 12, 27–29, 33, 34, 36, 38, and 53. Appellants advance no further argument on dependent claims 4–6, 9, 11, 13–26, 30–32, 35, 37, and 39–52. *See* Appeal Brief 5, 15. Accordingly, we sustain the Examiner's rejection of these claims for the same reasons discussed above.

DECISION

The Examiner's rejection of claims 1–53 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED